

CERTIFIED

Person to Contact [REDACTED]

Telephone No. [REDACTED]

Refer Reply to [REDACTED]

Date 18 JAN 1985

Dear Applicant

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(2) of the Internal Revenue Code of 1954.

The information submitted discloses that you are incorporated on [REDACTED] under the nonprofit corporation laws of the State of [REDACTED].

As stated in your Articles of Incorporation, your purposes are

to heighten community awareness to an appreciation of the arts to provide a forum for the community to unite and actively participate in many different ways for the support of visual and performing artists by giving them an opportunity to display their talents, to develop a broad base of community support through volunteerism, to provide a way for the community to become aware of its own potential as a whole, thereby developing pride and resourcefulness; to bring people of the community of [REDACTED] together in a celebration, thereby enhancing the image of the community and the reality of the strong linkage between the arts of the community; to establish the festival community as viable organization in support of the regional Arts Alliance; to procure monies (grants, sponsorships, ticket sales, etc.) to pay out monies for services, advertising and fees; to draw contractual agreements that are binding on the corporation and most important to provide a good quality arts festival not only for the people of [REDACTED] but for those offering their services to the festival.

28 JAN 1985  
[Signature]  
[Initials]

Our previous correspondence indicates the following:

- 1. Artists and arts persons from throughout the area exhibit their work at the festival.
- 2. Ticket sales are limited to third parties for such purposes as selling goods, food, arts and crafts, and for promotional purposes.
- 3. The entire purpose of the promotion is to create a festival atmosphere providing to the general public numerous diversions and activities.

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
EUR. NAME	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
DATE	12/17/84	12/19/84	1-4-85	1-7-85	1-7-85		

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific and educational purposes, no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(b) Operational test. (1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals...."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either organizational or the operational test it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

In construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. US, 326 U.S. 279 (1945) the Supreme Court of the United States said, "This plainly means that the presence of a single non-educational purpose if substantial in nature will destroy the exemption regardless of the number or importance of truly educational purposes". This statement applies equally to any category or charitable purpose under Section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Revenue Ruling 68-224, 1968-1 C.B. 262 describes an organization conducting an annual festival centered around regional customs and traditions which qualifies for exemption under Section 501(c)(4) of the Internal Revenue Code of 1954. The primary purpose of this organization is to hold an annual event which promotes community growth, publicizes the community and attracts persons to it, and provides a means whereby citizens may express their interest in local history and culture. The festival activities involve the majority of the citizens.

Your organization is closely related to the one in the above Revenue Ruling. We recognize that there are educational elements in your activities i.e., Artists in Action and Art Awards. However, it is clear that the primary emphasis is on the creation of a festival atmosphere and entertainment activities. Continuous entertainment on two stages, the sale of food specialty items and picnic delights and road races for the entire family do not constitute exclusively educational activities within the meaning of Section 501(c)(3). Furthermore, you are serving the private interests of artists and craftsmen when you permit them to sell their goods at the festival.

It is concluded that you are not entitled to exemption from Federal Income Tax under Section 501(c)(3) since you are not organized and operated exclusively for religious, or other exempt purposes under Section 501(c)(3).

**You are required to file Federal Income Tax Returns.**

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within thirty days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 9912.

Sincerely yours,

  
District Director